38, 290 A. 2d at 93. (*North Carolina Board of Education v. Swann*, 408 U.S. 43, 46, 91 S. Ct. 1284, 1286 (1971).

The Court below also quoted from *Louisiana v. United States*, 380 U.S. 145, 85 S. Ct. 817 (1965):

> "We bear in mind that the Court has not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future." *Id.* at 154, 85 S. Ct. at 822.

In the light of the foregoing legal framework, the Court below applied the test it set forth in *Pennsylvania Human Relations Commission v. Alto Reste Park Cemetery Association*, 453 Pa. 124, 134, 306 A. 2d 881, 887 (1973) (adopting standard enunciated in *Fibreboard Paper Products Corp. v. NLRB*, 379 U.S. 203, 216, 85 S. Ct. 398, 406-07 (1965)), in reviewing Commission final orders—"whether the Commission's Final Order is a patent attempt to achieve ends other than those that can fairly be said to effectuate the policies of the Human Relations Act"—and found that the provisions of the order under attack were not such an attempt.

Section 9 of the Pennsylvania Human Relations Act empowers the Commission to enter a remedial order after a finding of unlawful discrimination:

> If, upon all the evidence at the hearing, the Commission shall find that a respondent has engaged in or is engaging in any unlawful discriminatory practice as defined in this act, the Commission shall state its findings of fact, and

shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such discriminatory practice and to take such affirmative action including but not limited to hiring, reinstatement or upgrading of employes, with or without back pay, admission or restoration to membership in any respondent labor organization, or selling or leasing specified commercial housing upon such equal terms and conditions and with such equal facilities, services and privileges or lending money, whether or not secured by mortgage or otherwise for the acquisition, construction, rehabilitation, repair or maintenance of commercial housing, upon such equal terms and conditions to any person discriminated against or all persons as, in the judgment of the Commission, will effectuate the purposes of this act, and including a requirement for report of the manner of compliance.

The Commission considered the result of CHA's unlawful discriminatory practices—a virtually, totally segregated public housing authority and a similarly segregated public school system—and all the attendant evils that were the consequences of such segregation—and concluded that the appropriate remedy would be to order CHA to adopt the one tenant assignment procedure which without requiring the involuntary transfer of current tenants would most expeditiously achieve optimum desegregation of the projects.

The Court below specifically rejected CHA's argument now being raised anew that paragraphs two

(2) and three (3) of the Commission's final order unconstitutionally discriminated against Blacks.

> Because the Commission's Final Order seeks to make the racial composition in each housing project correspond to the ratio of Whites to Blacks for all projects administered by the authority, it does not appear that either Blacks or Whites as groups will be favored or disadvantaged in their quest for public housing, to any greater extent than they are presently. (A. 21)

In saying this, the Court below may have recognized the irony in the CHA, which followed a longtime policy of refusing housing accommodations to eligible public housing tenants because of their race, requiring Black applicants to wait for vacancies in "Black" projects, now complaining of the possible short-term consequences for Blacks of the Commission Order designed to expeditiously undo the effects of the unlawful policy. The underlying values encompassed in the Commission Order are well articulated by the Court in *Otero* v. *New York Housing Authority*, 484 F. 2d 1122 (2d Cir. 1973). In that case, the former site tenants who were mostly non-White were denied apartments in a new public housing project because the 171 apartments had been committed to others who were mostly White. The non-Whites who were denied housing sued the New York Housing Authority and H.U.D., which defended on the ground that to grant priority to the former site occupants would violate its constitutional and statutory duty to prevent racial imbalance in the project and the surrounding community. The *Otero* Court said:

"An additional source of the affirmative duty to integrate is found in the 1968 Fair Housing Act. . . . Judge Lasker [the Trial Judge] recognized these mandates. However, he further concluded that because the primary intention of the Act's sponsors was to benefit minority groups, the affirmative duty to integrate public housing should not be given effect where it would deprive such groups of available and desirable housing. We disagree. Such a rule of thumb gives too little weight to Congress' desire to prevent desegregated housing patterns and the ills which attend them. To allow housing officials to make decisions having the long-range effect of increasing or maintaining racially segregated housing patterns merely because minority groups will gain an immediate benefit would render such persons willing, and perhaps unwitting, partners in the trend toward ghettoization of our urban centers. . . . The affirmative duty to consider the impact of publicly-assisted housing programs on racial concentration and to act affirmatively to promote the policy of fair integrated housing is not to be put aside whenever racial minorities are willing to accept segregated housing. The purpose of racial integration is to benefit the community as a whole, not just certain of its members." *Id.* 1133, 1134.

Many court decisions, of course, have had the short-term effect of denying needed housing to Blacks when such housing would have adversely impacted upon integration. See e.g. *Shannon v. United States Department of Housing and Urban Develop-*

ment, 436 F. 2d 809 (3rd Cir. 1970), and *Gautreaux v. Romney,* 448 F. 2d 731 (7th Cir. 1971).

Having indicated the above policy and legal considerations for its final order, the Commission calls the Court's attention to paragraph 4 of its final order which reads:

> "Shall develop and submit to the Pennsylvania Human Relations Commission (at its Regional Office, Room 101, State Office Building, Broad and Spring Garden Streets, Philadelphia, Pennsylvania) for its approval, within 60 days of the effective date of this Order, an affirmative action program designed to achieve in Respondent's public housing projects the racial composition as set forth in Paragraphs 2 and 3 above, and upon obtaining said approval, forthwith to effectuate said program. Said plan shall include, but not be limited to preoccupancy and post-occupancy counseling and the establishment of tenants' councils."

It is the clear intent of this provision, and the Commission so states, that the provisions of Paragraphs 2 and 3 are not inflexible and that the Paragraph 4 contemplates and the Commission would favorably consider a comprehensive plan from CHA which while making every good faith effort to achieve desegregation as expeditiously as possible, would take account of emergency needs of applicants and would minimize to every extent possible vacancies.

II. The Final Order of the Commission Is Consistent With and in Furtherance of the Housing Policy of the United States

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The Department of Housing and Urban Development, the agency of the Executive Branch with prime responsibility to implement the housing policy of the United States, has consistently supported the Commission's final order and advised CHA to comply with it. (See attached exhibits A, B, and C.)

And Federal Courts have consistently held that the housing policy of the United States imposes an affirmative duty on all public agencies to actively promote integration in carrying on their activities. See e.g. *Otero v. New York Housing Authority*, supra, at 1134, and *Shannon v. United States Department of Housing and Urban Development*, supra, where the Third Circuit held that where H.U.D. approved a change to a plan which contemplated rental dwellings with rent supplement assistance and without an inquiry into the effect of the change on the type of housing or the racial concentration in the renewal area or the city as a whole, it was not in compliance with the 1949 Housing Act or the 1964 and 1968 Civil Rights Acts. At 821.

CONCLUSION

For all the foregoing reasons, Respondent Pennsylvania Human Relations Commission respectfully submits that this Court should deny this petition for a writ of certiorari to review the decision of the Supreme Court of Pennsylvania.

Respectfully submitted,

SANFORD KAHN
General Counsel
Pennsylvania Human Relations Commission
100 North Cameron Street
Harrisburg, Penna. 17101

ROY YAFFE
Assistant General Counsel
Philadelphia Regional Office
Room 711—State Office Building
1400 Spring Garden Street
Philadelphia, Penna. 19130

Attorneys for Respondent

EXHIBIT A

305

DEC 2 1974

Mr. Ernest Trosino
Executive Director
Chester Housing Authority
Six West Sixth Street
Chester, Pennsylvania 19016

Dear Mr. Trosino:

Subject: Petition for Reargument before the Supreme Court of Pennsylvania in the case of *Pennsylvania Human Relations Commission v. The Chester Housing Authority*, No. 41 January Term, 1974

I call to your attention the provisions of HUD Handbook 1530.2A, Chapter 1, Section 5.o. at page 3, copy attached, which prohibits the appeal from an adverse judgment without the prior concurrence of the Department. Although this procedure has not been followed in this case, this office has secured a copy of the Petition for Reargument and reviewed it. As a result of our review and inasmuch as the Supreme Court of Pennsylvania has upheld the Pennsylvania Human Relations Commission Final Order, we do not and cannot concur in your filing of the Petition for Reargument and the reasons stated in support thereof.

I have discussed this matter with Wagner D. Jackson, Assistant Regional Administrator for Equal Op-

portunity who concurs with our decision with regard to the Petition for Reargument. In addition, he reminded me of his letter to your Authority dated February 8, 1972, copy attached, which advised your Authority to revise your present HUD approved Tenant Selection and Assignment Policy and submit for HUD approval a new Tenant Selection and Assignment Policy consistent with the Commission's Order. We renew that advice and suggest that compliance with the advice given in the February 8, 1972 letter be made forthwith.

Sincerely,
(Sgd) William F. Hall, Jr.

William F. Hall, Jr.
Regional Counsel
Attachments—2

EXHIBIT B

JAN 15 1975

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
REGIONAL OFFICE
Curtis Building, Sixth and Walnut Streets
Philadelphia, Pennsylvania 19106

January 13, 1975

Region III In reply refer to: 3 GE

Francis G. Peleggi, Esquire
Peleggi and Desmond
115 E. Fifth Street
Chester, Pennsylvania 19013

Dear Mr. Peleggi:

Subject: *Pennsylvania Human Relations Commission v. Chester Housing Authority*, Supreme Court of Pennsylvania, No. 41 January Term, 1974

This letter responds to your letter dated November 29, 1974 in which you request my comment on the Pennsylvania Supreme Court decision in the above-cited case.

The Department's position in regard to this case has remained consistent since prior to the Final Order of the Pennsylvania Human Relations Commission of April 24, 1972. That position has been and remains one of full support of the letter and spirit of that order as recently upheld by the Pennsylvania Supreme Court.

While the Board's expression of concern in regard to the large waiting list of Black public housing applicants is understandable, a tenant selection procedure consonant with the Supreme Court Order need not run counter to any policies regarding the housing of applicant-families. The Department has approved and supported Tenant Selection and Assignment procedures which responded to similar orders of the Pennsylvania Human Relations Commission, most recently in the City of McKeesport. Enclosed is a copy of a memorandum from HUD Assistant Secretary for Equal Opportunity, Gloria E. A. Toote, to that effect.

If Chester Towers is the model of integration that you suggest it is, it would seem to me appropriate that you bring that matter to the attention of the Commission. Consideration of the Chester Towers situation would not have influenced our decision not to support the filing of a Petition for Reargument or justified a shift in Department policy from one of support for the Commission's order.

Sincerely,
(Sgd) William F. Hall, Jr.

William F. Hall, Jr.
Regional Counsel
Enclosure
cc:
Homer C. Floyd, Executive Director
Pennsylvania Human Relations Commission
Harold Cramer, Esquire

EXHIBIT C

Date:
In reply refer to:

To: Theodore R. Robb, Regional Administrator, Region III, 3S

Attention: Wagner D. Jackson, Assistant Regional Administrator for Equal Opportunity, 3E

From: Gloria E. A. Toote, Equal Opportunity, E

Subject: Request for Approval of Revised Mercer County and McKeesport, Pennsylvania, Housing Authorities—Tenant Selection and Assignment Plans

By memorandum, the Assistant Regional Administrator for Equal Opportunity (Region III), requested our approval of a Consent Agreement dated August 27, 1973, between the Mercer County Housing Authority and the Pennsylvania State Human Relations Commission as a revised Tenant Selection and Assignment Plan. By memorandum of January 23, 1974, the Assistant Regional Administrator for Equal Opportunity requested our approval of the Housing Authority of the City of McKeesport's request for an exception to their HUD-approved Tenant Selection and Assignment Plan to comply with the provisions of the Consent Agreement between the McKeesport LHA and the Pennsylvania Commission, dated January 30, 1971 (as amended June 26, 1972).

The Consent Agreements, signed by the Mercer County Housing Authority and McKeesport Housing

Authority with the Pennsylvania Human Relations Commission, contain certain stipulations and agreements which, as implemented, require material modification of the LHAs' HUD-approved Tenant Selection and Assignment procedures. The LHAs must assign new black applicants to predominantly white projects until the projects achieve an approved standard of integration. The LHAs must assign new majority tenants to predominantly minority projects until the projects achieve an approved standard of integration. Lateral transfers of existing tenants are allowed so long as such transfers are in accordance with this standard. Costs and expenses for lateral transfers shall be paid by the LHAs. The LHAs must adopt HUD Tenant Selection Plan A (one choice) until such time as the tenancy in all projects reaches the approved standard of integration.

We have reviewed the Consent Agreements which, in effect, establish Tenant Selection and Assignment Plans in substitution for the HUD-approved Plans. In accordance with Section 1.4(b) (2) (iii) of the Title VI regulations which provides that the responsible Department official is authorized to prescribe and promulgate plans, exceptions, procedures and requirements of eligible applicants and tenants and the May 13, 1971, Delegation of Authority relating to the carrying out of the requirements of Title VI, we hereby approve the Tenant Selection Plans of the McKeesport and Mercer County LHAs as modified by the Consent Agreements herein above described.

The LHAs should be informed that costs and expenses incurred during the process of lateral trans-

fer of tenants in accordance with the Consent Decrees may be borne by them and shall be considered approved operating expenses by the Department. Such expenses have been sanctioned in the past with respect to the Harrisburg, Johnstown and Chester Housing Authorities. In this regard, it is important to note that the Department is limited in its payments of operating subsidies to LHAs to amounts determined pursuant to a formula which does not include the capacity for increasing subsidy payments resulting from this kind of expense.

The results of the revised Plans should be carefully monitored by the Regional Office of Equal Opportunity to determine if these Plans are insuring compliance with the requirements of Title VI or if alternative or additional methods of selection and assignment are necessary to insure compliance with Title VI.

Gloria E. A. Toote
Assistant Secretary